PT 96-33
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

CONGREGATION OF THE MISSION, MIDWEST PROVINCE, APPLICANT	)	**Docket #: 91-16-1143**
	)	**Real Estate Exemption for 1991 Tax Year**
v.	)	
	)	**P.I.N.: 14-32-113-036**
STATE OF ILLINOIS, DEPARTMENT OF REVENUE	)	**Alan I. Marcus, Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE:

Mr. Stephan M. Dorfman of Altheimer & Gray appeared on behalf of Congregation of the Mission, Midwest Province.

SYNOPSIS:

This matter comes on for hearing pursuant to Congregation of the Mission, Midwest Province's (hereinafter "applicant") protest of the Illinois Department of Revenue's (hereinafter "Department") decision allowing partial exemption of the above-captioned property from 1991 real estate taxes pursuant to Ill. Rev. Stat. ch. 120 par. 500 *et seq*.[1] This proceeding raises the issue of whether any portion of the subject property qualifies for exemption under Ill. Rev. Stat. ch. 120 par. 500.2. Following submission of all evidence and a careful review of the record, it is recommended that certain units in the subject

[1]. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1991 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939, Ill. Rev. Stat. ch. 120 par. 482 *et seq*.

property be removed from the tax rolls for various periods not exceeding 38% of the 1991 tax year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2. The latter is the Department's decision allowing exemption of "the #3 front apartment at 2212 N. Racine" but denying exemption of the remaining portions of the subject property.

2. Applicant was incorporated under The General Not for Profit Corporation Act of the State of Missouri on December 6, 1988. Its purposes, as set forth in its amended articles of incorporation, are as follows:

> ... to carry on the work of the religious congregation known as the Congregation of the Mission Midwest Province in its educational and charitable activities.

Applicant Ex. No. 1.

3. Applicant was granted exemption from Use and related taxes pursuant to 35 **ILCS** 105/3-5(4) on April 2, 1992. Applicant Ex. No. No. 2.

4. Applicant is also known as the Vincentians, an order of priests and brothers within the Roman Catholic Church. Tr. pp. 18, 36. They are similar to monks in that their religious vows require them to engage in a communal living style even if their work sites are located away from their residences. Tr. pp. 47-49. However, unlike monks, applicant's members do not reside in monasteries. *Id*.

5. Communal life, as practiced by applicant's members, involved sharing "meals, prayer and life" to the extent permitted by the members' work schedules. Tr. pp. 19, 49.

6. Before acquiring the subject property, applicant had been experiencing a housing shortage for its members. Specifically, "several" of applicant's members were living in individual apartments in the Lincoln Park area of Chicago. Tr. pp. 17-18, 47-48.

7. Applicant also selected the subject property for purchase because of its proximity to the various members' work sites. Tr. p. 20. Many worked at St. Vincent DePaul parish (hereinafter "St. Vincent"), which applicant's order supplied with priests. Others taught and administered "within" DePaul University or held teaching or administrative positions within the Vincentien order or the Chicago Arch Diocese. Tr. p. 19.

8. Applicant took title to the subject property via a trustee's deed dated August 15, 1991. Applicant Ex. No. 5.

9. The subject property is identified by Permanent Index Number 14-32-113-036. It is situated on a 124 X 60 square foot parcel of land and improved with a 13,256.76 square foot building located at 2210-2212 North Racine Ave., Chicago, IL. Dept. Gr. Ex. No. 1.; Applicant's Ex. No. 5.

10. The building is 4 stories tall with a basement built under it. Tr. p. 21. During the 1991 tax year, the four stories were divided into "about 13 different apartments with a basement which was ... divided up between storage, luggage, boxes ... and ... mechanical equipment." Tr. p. 23.

A. The basement had no living quarters in it during the 1991 tax year. *Id*.

B. The 13 apartments were approximately the same in that each had one bedroom and a "real modest" kitchen. *Id*.

C. Four of the 13 apartments were vacant as of the date applicant took title. Tr. p. 25. These apartments were No. 3F at 2210 N. Racine and Nos. 1F, 2R and 4F at 2212 N. Racine. Tr. p. 26.

D. Another apartment, number 3F at 2212 North Racine, was occupied by one of applicant's members, Father David Nygren, who was employed at DePaul University. Tr. pp. 28-29; 36.

F. The eight remaining apartments were subject to residential leases with private individuals, all of which applicant assumed when it purchased the property. Tr. pp. 29, 32, 42. Applicant did not renew any of the leases after they expired. Tr. p. 41.

E. Applicant applied all rent proceeds from the pre-existing leases toward a renovation project which it began immediately upon assuming title. Tr. pp. 50-51.

12. Applicant undertook these renovations, which took "the better part of six months" (Tr. p. 41) and were not completed before the end of the 1991 tax year (*Id*.) so that its members could move in and because "the building was pretty much unimproved ... [and] hadn't been touched for many years." Tr. p. 27.

13. The renovations, which began in the four vacant apartments, (Tr. p. 26), included but were not limited to replacing water lines that had become crusted with age (Tr. pp. 27, 41); upgrading "substandard" heating (*Id*.); replacing all of the outdoor windows (Tr. p. 40), replacing the heating and air conditioning units in each apartment (*Id*.); putting in a duct system that replaced old space heaters (*Id*.); putting in a furnace (*Id*.); repairing the plaster ceilings in some of the units because they were in danger of falling (*Id*.); as well as replacing the old domestic hot water heaters and other plumbing repairs. (Tr. p. 41).

14. Due to the renovations, applicant did not conduct any religious ceremonies on the subject property during the 1991 assessment year. However, "about" two or three times per month, three or four of applicant's members would go to the subject property and pray morning and evening liturgies with Father Nygren. Tr. pp. 38-39.

15. One of the eight units subject to a pre-existing residential lease became vacant September 1, 1991. Tr. p. 42. Applicant began renovating this

apartment, Number 3R at 2210 N. Racine, immediately after it became vacant. Tr. p. 43. The renovations, which included painting and bathroom repairs as well as installing new carpet and floors, were not completed by the end of the 1991 tax year. Tr. pp. 30, 43, 44.

16. Two other units subject to pre-existing leases, Nos. 1R and 3R at 2212 N. Racine, became vacant November 1, 1991. Tr. pp. 31, 43. Applicant began renovating these units, which were "in terrible shape," immediately after they became vacant. *Id*. The repairs, which included complete replastering and installation of a new heating system, were not completed within the 1991 tax year. Tr. pp. 43, 44.

17. An additional unit, No. 1R at 2210 N. Racine, became vacant December 1, 1991. Tr. pp. 31, 44. Applicant began renovating this unit immediately after it became vacant. The renovations, which were substantially similar to those undertaken in the other apartments, took approximately six months. Tr. p. 44.

18. The four remaining units were subject to pre-existing residential leases. One lease expired March 31, 1992, two others expired April 30, 1992 and the last expired May 31, 1992. Tr. p. 46.

CONCLUSIONS OF LAW:

On examination of the record established, this applicant has partially demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant partial exemption of the subject properties from real estate taxes for various periods not exceeding 38% of the 1991 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the subject property qualifies for partial exemption under Ill. Rev. Stat. ch. 120 pars. 500.2 should be modified as set forth below. In support thereof, I make the following conclusions:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, Ill. Rev. Stat. ch. 120 par. 428 *et seq*. The provisions of that statute which govern disposition of the present matter are found in paragraph 500.2, which, in relevant part, provides for exemption of the following properties:

> All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, including all such property *owned* by churches or religious institutions or denominations *and used* in conjunction therewith as parsonages or other housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or

> for such denominations, and including the convents and monasteries where persons engaged in religious activities reside. (Emphasis added).

B. The Burden of Proof and Related Considerations

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and, have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

Although tax exemption is ordinarily available to property used exclusively for religious purposes without regard to ownership, the statute [in this case, paragraph 500.2] does require ownership, as well as exclusive use, for property used as parsonages or other housing facilities provided for ministers and their families. Immanuel Evangelical Lutheran Church v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994). *See also*, McKenzie v. Johnson, 98 Ill.2d 87 (1987) However, both the plain meaning of paragraph 500.2 and Illinois case law prohibit exemption where property used exclusively for religious purposes is "leased or otherwise used with a view to profit ...[.]" Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919 (1st Dist. 1988) (hereinafter "Victory Christian").

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911) (hereinafter "McCullough") the Illinois Supreme Court considered whether appellee's real estate qualified for religious and educational exemptions from property taxes under amendments to the Revenue Act that became effective July 1,

1909. While the court's analysis of the educational exemption has limited relevance to this proceeding, its definition of the term "religious purpose" provides the basic framework for analyzing taxpayer's claim under paragraph 500.2.

The court began its analysis by noting that "[w]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations." McCullough, *supra* at 136.

Cases decided after McCullough have acknowledged that religious beliefs are not necessarily limited to those which profess an orthodox belief in God. *See*, United States v. Seeger, 380 U.S. 163 (1965). However, the following definition of "religious purpose" contained in McCullough, emphasizes a more traditional approach:

> As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction. McCullough at 136-137.

C. Applicant's Sales Tax Exemption

Applicant seeks to obtain exemption from 1991 real estate taxes, in part, by reference to its exemption from use and related taxes under 35 **ILCS** 105/3-5(4). (hereinafter "sales tax exemption"). The evidence pertaining to such exemption establishes that it became effective April 2, 1992. Because this date did not fall within the 1991 assessment year (which concluded December 31, 1991) any evidence pertaining to applicant's sales tax exemption is technically irrelevant to the instant proceeding. Moreover, such exemption, in and of itself, does not establish that the property was in fact in exempt use, as required by Salvation Army, *supra*, during the 1991 assessment year. People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970) and

cases cited therein. Therefore, applicant's sales tax exemption is neither relevant to nor dispositive of the present matter.

D. The State of Title and its Effect on Applicant's Position

The trustees deed (Applicant Ex. No. 5, hereinafter "deed") establishes that applicant did not own the property until August 15, 1991. Although ownership is not the determinative test for exemption under paragraph 500.2,[2] Section 27(a) of the Revenue Act of 1939 provides, in relevant part, that:

> The owner of owner of real property in any year shall be liable for the taxes of that year ...[.] ... The purchaser of real property on January 1 shall be considered the owner on that day. Provided, however, that whenever a fee simple or lesser interest in real property is purchased, granted taken or otherwise transferred for a use exempt from taxation under this Act, such property shall be exempt from taxes from the date of the right of possession, payment or deposit of the award therefor.

Ill. Rev. Stat. ch. 120 par. 508(a)

These provisions, coupled with the deed, establish that applicant's claim for exemption must be measured from the date it assumed title to the subject property, August 15 1991. Therefore, such claim is limited to a maximum of 38% of the 1991 assessment year.[3]

Applicant recognizes that it is not entitled to an exemption for the entire 1991 assessment year. However, relying on City of Chicago v. Department of Revenue, 147 Ill.2d 484 (1992), applicant seeks to exempt, (as of the date it assumed title), 100% of the subject property's underlying land.

In City of Chicago, the Illinois Supreme Court held that two buildings owned by the City could be separately exempted from the underlying land which the City subleased from Kraft, a private corporation. The court undertook

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[2]. *See* discussion at pp. 7-8, *supra*.

[3]. For analysis and discussion of the related topic of standing as a limitation on the right to claim exemption or object thereto, *see* McKenzie v. Johnson, 98 Ill.2d 87 (1987); Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1991).

separate analyses of the building and underlying land *precisely because* the latter was subject to a ground lease and the exemption at issue specifically required ownership.[4] Thus, appellant could obtain exemption of the underlying land *only if* it proved that the ground lease vested it with an ownership interest in that portion of the property.

This applicant is a religious order, not a municipality. Thus, its claim for exemption cannot be determined under the statutory provisions at issue in City of Chicago. Rather, the instant exemption claim rests on interpretation of a statute which, by its plain meaning, requires both exempt ownership *and* exempt use.[5]

Moreover, unlike the appellant in City of Chicago, this applicant does not lease the underlying ground from another entity. Rather, the trustee's deed vests it with title to *all* facets of the subject property, including the building and underlying land. For these reasons, I conclude that City of Chicago is factually and legally distinguishable from the present case. Therefore, applicant's attempt to apply that court's holding to the instant matter must fail.[6] Accordingly, I must refocus my analysis on the extent to which applicant's ownership and use of the building qualifies for exemption under paragraph 500.2.

E. Receipt of Rental Proceeds

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[4]. The provisions at issue in City of Chicago were found in Ill. Rev. Stat. 1987 ch. 120 par. 500.6. In relevant part, those provisions exempted:

> ...all public buildings *belonging* to any county, township or incorporated town, with the ground on which the buildings are erected. (Emphasis added).

[5]. *See* discussion of Immanuel Evangelical Lutheran Church v. Department of Revenue, *supra*. p. 7.

[6]. It should be noted that the City of Chicago court found that appellant therein failed to sustain its burden of proof with respect to ownership of the underlying land. Thus, its actual holding with respect to such land must be viewed in the context of a failure of proof, not a substantive principle of property tax law.

As noted above, the plain language of paragraph 500.2 bars exemption where the property is "leased or otherwise used with a view to profit ...[.]" Victory Christian, *supra*. There, the court denied exemption of a property leased from a private individual to applicant's church, which used the demised premises exclusively for religious and educational purposes.

Here, applicant assumed various residential leases when it took title to the subject property. Illinois courts have long held that exempt status is not destroyed *merely* because the applicant derives some or all of its funding from non-exempt sources. American College of Surgeons v. Korzen, 36 Ill.2d 340 (1967), (hereinafter "ACS"), overruled on other grounds in Christian Action Ministry v. Department of Revenue, 74 Ill.2d 51 (1978); Lutheran General Health Care v. Department of Revenue, 231 Ill. App.3d 652 (1st Dist. 1992). Rather, courts have focused on the extent to which the applicant profits from such funds or applies them to exempt purposes. ACS, *supra*; Lutheran General, *supra*; People ex rel Cannon v. Southern Illinois Hospital Corp., 404 Ill. 66 (1949).

This applicant undertook its renovation project so that its members could fulfill their religious vows, which required that they engage in communal living. Inasmuch as such vows establish a religious purpose within the meaning of McCullough, *supra*, I find that any steps taken to fulfill them, including the renovation project,[7] constitute an exempt activity under paragraph 500.2.

Applicant applied all proceeds from the residential leases toward its renovation project. Accordingly, I conclude that applicant did not profit from the rental income. Therefore, mere receipt of such income does not destroy applicant's claim for exemption.

F. Exemption of the Basement

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[7]. *See* discussion of Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987), *infra*, pp. 13-14

In Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983), the court confronted the issue of whether a property owned by appellant's church could qualify for exemption even though it was boarded up and vacant during the years in question. In holding in the negative, the court relied on Skil Corporation v. Korzen, 32 Ill.2d 249 (1965) for the proposition that "evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose" and therefore, "[i]ntention to use is not the equivalent of actual use." *See also*, Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

The instant record establishes that applicant neither used the basement nor included it in its renovation plans during the 1991 tax year. Thus, while applicant may have intended to use the basement for exempt purposes after it completed the renovation project, it did not make appropriate use of that area in 1991. Therefore, the entire basement area should remain on the tax rolls throughout the 1991 assessment year.

G. Exemption of the Individual Units

In Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971), (hereinafter "ITT"), the Illinois Supreme court reaffirmed the long-standing principle that "[w]here a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation." *Id*. at 64.

The property at issue in ITT was a 107 acre tract. Appellant leased 40 of the 107 acres to a private individual for crop purposes at market rate for the area. However, it was developing or using the remaining 67 acres, which contained a 12,000 square foot building and other facilities, for classroom, research and office purposes.

Appellant sought to exempt the entire tract, arguing that the leased portion would eventually be used as part of its plan to develop "a major auxiliary campus." *Id*. at 60. The court however found that the lease prevented applicant from actually using or developing the 40 acres for exempt purposes during the year in question. Accordingly, it denied exemption as to that portion of the tract but held in favor of exemption for the 67 acres that were actually being developed or used for purposes related to education.

A more recent example of partial exemption analysis, on facts which are somewhat similar to the present case, can be found in Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987). There, applicant sought to exempt a 24.309 acre tract of land from 1983 real estate taxes. Although it purchased the property May 26, 1983, appellant did not break ground on the portion devoted to an Urgent Care Center until August of 1994. However, it did develop a master cite plan and schematic drawings for the Urgent Care Center, as well as approve a plan for that facility, in 1993. It also began physical adaptation of that portion of the tract devoted to the Urgent Care Center through landscaping and construction of berms (dirt shoulders alongside the roads) during the same year.

Like the appellants in IIT, those in Weslin Properties sought exemption of the entire tract. However, the court held that only those portions of "the land necessary for the Urgent Care Center and necessary roads and parking facilities qualified for exemption in 1993." Weslin Properties, *supra* at 587. In arriving at its holding, the court distinguished between cases such as Skil Corporation, *supra*, where exemptions were denied because appellant's intent to use the property for exempt purposes did not alleviate the requirement for actual use, and IIT, *supra*, where exemptions were granted as to those portions of the properties which appellants actually adapted and developed for exempt use.[8]

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[8]. *See also*, People ex rel Pearsall v. Catholic Bishop,311 Ill. 11 (1924); In re Application of County Collector, 48 Ill. App.3d 572 (1977).

The Weslin Properties court, with one justice dissenting,[9] began analyzing this distinction by reference to "the realities of modern construction practice." Weslin Properties at 586. Specifically, the court took note of "the complexity of the architectural process of designing a site for a medical campus and of designing the buildings to be located thereon." *Id*. Accordingly, the court concluded that the series of steps which applicant took with respect to the Urgent Care Center in 1983 transcended the realm of mere intent into that of exempt adaptation and development.

Like the Weslin Properties court, I will not ignore the realities of modern construction practice. Nor will I disregard the practical and legal realities, (to wit, the assumed residential leases), which prevented this applicant from renovating each of the thirteen units immediately upon assuming title to the subject property. Nevertheless, I reiterate my finding that such renovations were undertaken in furtherance of an exempt purpose, (making it possible for applicant's members to fulfill their communal living vows), and find that, because the renovations in each of the units listed below (with the exception of the one occupied by Father Nygren), were quite extensive, such renovations transcended the realm of mere intent into exempt adaptation and development. Accordingly, I recommend that the following units in the subject property be removed from the 1991 tax rolls according to the ensuing schedule:

> 1. The four apartments that were vacant as of the date applicant took title, No. 3F at 2210 N. Racine and Nos.1F, 2R and 4F at 2212 N. Racine, should be removed for 38% of the 1991 assessment year.
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> 2. The apartment occupied by Father Nygren, No. 3F at 2212 North Racine, should be removed for 38% of the 1991 assessment year. This exemption should be granted because Father Nygren was fulfilling his religious vows by residing in a property that was being adapted and

[9]. The dissenter, Justice Nash, disputed the majority's application of the "actual use" requirement. He further argued that the entire property should remain on the tax rolls because it was not in actual, exempt use during any portion of the year in question. Weslin Properties, *supra*, at 587-589, (Nash, J. dissenting).

developed for purposes of allowing other members of his order to fulfill their vows of communal living.

3. The unit which became vacant September 1, 1996, No. 3R at 2212 N. Racine, should be removed for 33% of the 1991 assessment year.

4. The two apartments which became vacant November 1, 1991, Nos. 1R and 3R at 2212 N. Racine, should be removed for 17% of the 1991 assessment year.

5. The unit which became vacant December 1, 1991, No. 1R at 2210 N. Racine, should be removed for 8% of the 1991 assessment year.

6. All other units not specifically mentioned in paragraphs 1 through 5 should remain on the tax rolls throughout the 1991 assessment year.

Finally, I would note that the above partial exemptions are being granted by unit number rather than square footage because applicant submitted no evidence as to the square footage of each unit. I will not find, as applicant proposes, that each unit constitutes a particular percentage of the building because applicant's formula fails to account for common areas, such as hallways and staircases. Thus, like the Department's initial decision, I must identify the exempt areas by unit number.

WHEREFORE, for the reasons stated above, the Department's decision allowing partial exemption should be modified in accordance with the preceding analysis.

Date

Alan I. Marcus
Administrative Law Judge